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SUBJECT: 2008 SPECIAL 301 REVIEW - GHANA

REF: STATE 9475

¶1. Summary: Ghana has made progress in recent years in protecting intellectual property rights (IPR) under both domestic and international law. Most domestic intellectual property laws have been revised to become compliant with Trade-Related Aspects of Intellectual Property Rights (TRIPS). The number of pirated and counterfeit goods is rising, largely smuggled from countries in the Far and Middle East. The government of Ghana provides limited resources for IPR protection, but law enforcement institutions have been increasingly active in working directly with the authorized producers. Because of Ghana's progress in protecting IPR and the government's responsiveness when U.S. companies in Ghana raise IPR concerns, post recommends against 301 list placement for Ghana. End Summary.

Production, Import, and Export of Counterfeit Goods

¶2. The production and export of counterfeit goods is negligible. However, the import (usually through smuggling) of counterfeit goods is on the rise. The Customs, Excise and Preventive Service (CEPS) occasionally seizes and destroys smuggled goods but many still find their way into the market.

Enforcement

¶3. Ghana has no central coordinating body for IPR enforcement. IPR enforcement bodies are CEPS, the Judiciary, and the Ghana Police Service. The Registrar-General's Department (RGD) registers all IP rights except copyrights. The Copyright Office, within the Ministry of Justice, registers copyrights.

¶4. CEPS seizes and destroys pirated and counterfeit goods only if they have notification from either a court, the RGD, or the Copyright Office. In November 2005, CEPS seized over 109 million counterfeit Marlboro cigarettes smuggled from China. CEPS destroyed the cigarettes in November 2006 in collaboration with Philip Morris Inc. and after substantial advocacy from post. CEPS in 2008 signed an MOU with the local organizers of a major African soccer tournament in Accra to protect license holders of logos and mascots of the event. This effort was largely successful. CEPS also has ongoing agreements with companies like Unilever, where trademark owners give clearance for imported items bearing their trademarks. The Copyright office occasionally calls on the police to conduct raids on sellers of audio and video materials.

¶5. There is no IP court, but a commercial court was established in Accra in 2005 to try commercial cases including IP cases. The commercial court judges have been trained to handle IP cases. Only a few trademark, patent, and copyright infringement cases have been

filed in Ghana.

Optical Media Piracy

¶6. Piracy of protected optical media is known to take place, although there is no reliable information on the scale of this activity. Katamanto is a local market in Accra well known for pirated audio-visual materials. It has been a major target for raids by IP enforcement agencies.

¶7. Most of the optical media in Ghana are made in the Far East and smuggled into Ghana through Togo. A monitoring unit was established by the Copyright Office, housed within the Ministry of Justice, to combat this problem. The administrator of the office believes that the job of identifying genuine works would be easier if the Copyright Office had a direct arrangement with the rights owners to track the import and movement of products within the country.

Use/Procurement of Computer Software by GoG

¶8. There is no stated government policy to ensure that the use of software complies with national and international standards of copyright protection. There is widespread government use of illegal software. Buyers are often unaware the software is illegal and rights owners are not in Ghana to monitor replications. Three years ago, Microsoft's office in Nigeria established a compliance office in Ghana, working together with the Copyright Office to check illegal use of its products. Some government institutions only purchase from authorized dealers because of the support and training that accompanies genuine products.

Data Protection

¶9. The Food and Drugs Board (FDB), the Environmental Protection Agency, and the Ministry of Food and Agriculture are guided by the Protection Against Unfair Competition Act, which includes protection of pharmaceutical and agricultural test data. The FDB finds it increasingly difficult to monitor the quality of similar products entering the market from different countries and/or companies. It plans to revise its mandate, which currently does not allow it to track products to the original producer.

TRIPS Compliance and Domestic IPR Legislation

¶10. In the past five years Ghana's parliament has passed all six bills designed to bring Ghana into compliance with WTO TRIPS requirements. These are Copyright, Trade Marks, Patents, Layout-Designs (Topographies) of Integrated Circuits, Geographical Indications, and Industrial Designs laws.

¶11. Although these new laws have been passed, subsidiary legislation (Legislative Instruments or LIs) is required to define the procedures for IPR registration and enforcement. LIs under some of the inadequate old laws are still in force pending formal amendment. According to an attorney at the Registrar-General's (RGD) office, registration of industrial designs (except textiles), layout-designs of integrated circuits, and geographical indications are not possible because there are no new LIs in place to enforce them. A draft LI for the Copyright law has been prepared and is expected to be placed before parliament by the end of February 2008.

The RGD expects to prepare a national policy on IP, review the other five laws, and pass the accompanying LIs before the end of ¶2008.

¶12. In some cases the GoG has found ways to implement new IPR protection without amending old LIs. For example, the Trademarks Regulation LI 667 of 1970 is still in force because Section 53 (5) of the new Trademarks Act 664 of 2004 requires that LI 667 be officially amended, which has not happened. Nonetheless, the new 2004 law extends the registration of trademarks for goods to include trademarks for services, which goes beyond coverage in LI 667. The

Registrar-General has been allowing the registration of service trademarks since December 1, 2004.

Treaties

¶13. In 2004, Ghana's parliament ratified the World Intellectual Property Organization (WIPO) internet treaties, namely the WIPO Copyright Treaty, and the WIPO Performance and Phonograms Treaty. Ghana deposited its instrument of ratification with WIPO in August ¶2006.

Recommendation

¶14. Post recommends that Ghana not be placed on a 301 Watch List. Ghana has passed laws to bring it into compliance with its international commitments and the GOG is sensitive to IPR protection needs, and while it should give the matter higher priority, the GoG is eager to take advantage of training opportunities from USPTO and has begun to agree to bear some costs associated with that training.

The government initiates raids on pirated goods and makes good faith efforts to respond to IPR concerns raised by the United States or U.S. companies in Ghana. For example, in the case of counterfeit Marlboro cigarettes, the GOG addressed the problem to the satisfaction of Philip Morris Inc. In addition, the market in Ghana is small and local piracy has a limited impact on U.S. products.

Bridgewater